

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 228 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SULEMAN HAJI HUSEN

Versus

MEMBERS OF EXECUTIVE COMMITTEESUNNY MUSLIM HALAI GHANCHI

Appearance:

MR SURESH M SHAH for Petitioner

MR AR THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 09/08/2000

ORAL JUDGEMENT

1. This is a revision application u/s 29[2] of the Bombay Rent Act, at the instance of the original defendant - tenant, who was sued by the respondents plaintiffs - landlords on a number of grounds, including the ground of arrears of rent of more than six months,

and that the defendant - tenant was not ready and willing to pay the rent.

2. The trial Court, on a consideration of the pleadings of the parties, raised appropriate issues and on a total appreciation of the evidence on record, found in favour of the landlords and passed a decree of eviction.

3. It may be noted in this context that one of the main contentions of the defendant was that he is not a tenant of the suit premises at all, and that the real tenant is his (defendant's) father. It was therefore his substantial contention that since he was not a tenant of the premises in question, he was under no obligation to pay the rent, and therefore, no decree of eviction can be passed against him in his capacity as a tenant.

4. The tenant being aggrieved by the decree of eviction passed against him, preferred an appeal before the lower appellate Court, which on a re-appreciation of the entire evidence on record, dismissed the appeal of the tenant and confirmed the decree of eviction passed by the trial Court against the defendant - tenant.

5. Hence, the present revision u/s 29[2] of the Bombay Rent Act at the instance of the original defendant.

6. I am conscious of the very limited and circumscribed jurisdiction of this Court which is exercisable u/s 29[2] of the Bombay Rent Act. In the exercise of this particular jurisdiction, this Court would not be justified in interfering with the findings of fact, and would not be justified in re-appreciation of the evidence on record, with a view to ascertain whether on the same set of facts another view is just possible. However, when it is found that the Courts below have, while dealing with the factual aspects of the matter, completely ignored the legal aspect of the matter, this Court is bound to interfere. On the facts found in the instant case, and as is apparent from the impugned judgements of the two Courts below, as discussed hereinafter, it is obvious that both Courts have completely omitted to apply their minds as to whether section 12[3][a] or section 12[3][b] of the Rent Act would apply to the facts of the case. As will be discussed hereinafter, the trial Court jumped to a conclusion without application of mind, or acted on an assumption without any justification, that section 12[3][a] applied, and held that since the tenant had not

complied with his obligations under the said section, the Court was obliged to pass a decree of eviction against the tenant. Unfortunately, the lower appellate Court remained unaware of the situation, and confined itself only to the factual controversy as to whether the defendant was a tenant in respect of the suit premises or not. Having come to the conclusion that the defendant was in fact a tenant, the lower appellate Court blindly followed the assumption of the trial Court in applying section 12[3][a] of the Rent Act, and therefore, confirmed the decree of eviction.

6.1 As is discussed hereinafter, there is absolutely no warrant or justification for applying section 12[3][a] of the Rent Act, looking to the pleadings of the parties, the issues raised and the findings of fact recorded on such issues.

6.2 The contention raised before me on behalf of the petitioner - tenant requires serious consideration, to the effect that there was in fact a dispute as to standard rent raised by the tenant, and that therefore, section 12[3][a] of the Rent Act would not apply.

6.3 In this context, note must be taken of the statutory notice issued by the landlord at exh.32 dated 9th July 1976, in which the landlord has specifically asserted that the defendant - tenant was bound to pay the specified rent, as being "Pramanit" rent. A literal and narrow meaning to the said word could be assigned by calling it "certified" rent. A broader meaning could also be assigned to it by calling it "authorized" rent. In any case, it is not possible to construe this assertion on the part of landlord to mean that the specified rent was "agreed rent" or "contractual rent".

6.4 The tenant replied to the statutory notice of the landlord by his reply of 19th July 1976 at exh.35. It may be noted that this reply is within 30 days of the statutory notice, and in the said reply, the tenant has specifically denied that he is bound to pay the specified rent as "Pramanit" rent. No doubt, the tenant has disputed, in reply to the suit notice, the claim of the landlord that he is a tenant in respect of the suit premises. However, this controversy is not important at the present juncture.

6.5 The landlord even in the plaint at exh.1, in para - 1 thereof once again reiterates that the defendant is a tenant in respect of the suit premises, whereof the "Pramanit" rent is Rs.35/-. As against this, the

defendant - tenant in his written statement at exh.13 (in para 1 thereof) specifically denies the averments made in para 1 of the plaint, and denies that he is in occupation of the suit premises, whereof the "Pramanit" rent is Rs.35/- per month. On a plain and common sense interpretation of these pleadings, it becomes obvious that the landlord has asserted two things, (i) that the defendant was a tenant in respect of the specified premises, and (ii) that the rent of Rs.35/- per month thereof was the "Pramanit" rent. As against these two assertions, the defendant - tenant has specifically denied both the assertions.

6.6 The matter does not rest here. Both parties were aware of this controversy, which resulted in the trial Court specifically raising issues at exh.10, wherein issue No.7 reads as under :

"(7). What is the standard rent of the suit premises ?

It is therefore obvious that the trial Court was aware that there is a dispute as to standard rent, and that the said dispute requires to be decided and hence, the specific issue.

6.7 It is not that the trial Court merely raised the issue, but also dealt with the controversy as to standard rent on the facts of the case, and ultimately came to a finding of fact by observing, "So, its present rent of Rs.35/- cannot be said to be excessive nor unreasonable and the defendant has also not proved it. So, it is held to be a standard rent."

6.8 Thus, it is equally obvious that the trial Court was definitely aware that there was a dispute of standard rent, which dispute was factually decided, by recording a finding of fact as to what the standard rent ought to be. This has been decided at the end of para 6 of the trial Court judgement.

6.9 However, the trial Court while dealing with the main contentious issue as to whether the defendant was a tenant in respect of the suit premises or not, completely overlooked the controversy as to standard rent. It therefore appears that when the trial Court recorded a finding of fact that the defendant was in fact a tenant of the suit premises, it lost sight of the fact that as part of the same judgement and in fact in very previous paragraph [para 6], the trial Court has decided the issue as to standard rent. Then in para 7 of the judgement,

the trial Court committed a gross error in observing as under :

"He has not raised any contention of standard rent and the said rent was in arrears for more than six months when the suit notice was given on 9th July 1976."

The trial Court then compounded this error by acting on the assumption that there is no contention as to standard rent, and that therefore, ipso facto section 12[3][a] would apply, and having applied this section, it found on the facts of the case that the decree for eviction must follow.

6.10 The lower appellate Court while dealing with the appeal of the tenant, concentrated upon the contentious issue as to whether the defendant was a tenant in respect of the suit premises or not, and after deciding that the defendant was in fact a tenant, fell into the same error as the trial Court, and blindly applied the provision of section 12[3][a], completely overlooking the scope and meaning of issue No.7 raised by the trial Court and its factual finding recorded thereon. In other words, even the lower appellate Court failed to note that there was a dispute as to standard rent, which is apparent on the face of the trial Court judgement. The lower appellate Court therefore erroneously applied section 12[3][a] to the facts of the case, and thereby, confirmed the decree of eviction passed by the trial Court.

7. As discussed hereinabove, it cannot possibly be overlooked that once there is a dispute as to standard rent, section 12[3][a] of the Rent Act cannot apply, and the Court is bound to apply its mind to the facts of the case from the perspective of section 12[3][b] of the Act. In other words, the Court must then examine as to whether the tenant has complied with the requirement of section 12[3][b], in order that he may avail of the protection of this provision. Clearly, the lower appellate Court has failed to do this. The decree and judgement of the lower appellate Court is therefore completely erroneous and is therefore required to be quashed and set aside. It is accordingly so directed.

8. It is a well settled principle that an appeal is an extension of the suit, and in order to examine whether a tenant is entitled to the protection of section 12[3][b], the facts of the case have also to be examined as to whether he was regular in depositing the standard rent during the course of appeal. I am therefore of the

opinion that, having set aside the judgement and decree passed by the lower appellate Court, a remand to the lower appellate Court is necessary. It is therefore directed that the case be remanded back to the lower appellate Court for the purpose of factual determination as to whether the tenant has complied with the requirements of section 12[3][b] of the Act, both during the pendency of the trial, and also during the pendency of the appeal.

9. Since the original suit is of the year 1976, this is a very old matter which requires expeditious disposal. The lower appellate Court is therefore directed to re-hear the appeal in the light of the observations made hereinabove, and to dispose of the same as expeditiously as possible, and in any case, not later than 28th of February 2001.

10. The Registry is directed to remit the record & proceedings to the lower appellate Court as expeditiously as possible, and in any case, not later than 18th of August 2000.

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